

## REMARKS

Applicants have amended the specification to include the current address of the American Type Culture Collection. Claim 14 was amended as suggested by the Examiner. The amendments add no new matter. Claims 2 to 7, 9 to 11, and 14 to 17 are pending and under consideration.

The Examiner objected to the oath or declaration. Action at page 2, item 1. Solely to expedite prosecution and not acquiescing to the objection, Applicants enclose a new declaration.

The Examiner rejected claim 14 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Action at page 4, item 7. Specifically, the Examiner alleged that the language "such an *Hte* mutation" renders claim 14 indefinite. *Id.* The Examiner proposes amending that language to recite "said *Hte* mutation." Solely in an effort to expedite prosecution, and not acquiescing to the rejection, Applicants have amended claim 14 as suggested by the Examiner. Thus, this basis for the rejection is moot.

The Examiner rejected claims 1 to 13 under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled. Action at page 3, item 3. The Examiner states that the Applicants must provide a statement concerning the availability of the deposit. Solely to expedite prosecution and not acquiescing to the objection, Applicants enclose an appropriate statement. Thus, the § 112, first paragraph, rejection is moot.

On the Form submitted with the Information Disclosure Statement on August 26, 2002 ("2002 IDS"), next to the full citation of Likahacheva et al., "Induction of mutants of *Escherichia-coli* K-12 with increased efficiency of plasmid transformation," Byulleten' Eksperimental' Noi Biologii I Meditsiny; 93 (5): 81-82 (1982) ("Likahacheva document"),

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the Examiner added the words "Abstract only" next to her initials and added the words "English language abstract" to the full citation. As asserted in the 2002 IDS, "[w]here the information is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance [under 37 C.F.R. § 1.98(a)(3)] can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office." (See MPEP §609 A(3), second paragraph.) Applicants enclosed a copy of such a Search Report from a counterpart PCT application with the 2002 IDS.

Accordingly, Applicants satisfied the requirements for having the entire Likahacheva document considered by the Examiner. The Examiner's attempt to limit her consideration to the English language abstract was thus improper. Applicants enclose another form and respectfully request that the Examiner place her initials next to the full citation without the qualifying insertions concerning the abstract.

Applicants respectfully assert that the application is in condition for allowance and request issuance of a Notice of Allowance. If the Examiner does not consider the application to be in condition for allowance, Applicants requests that she call the undersigned at (650) 849-6620 to set up an interview.

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Please grant any extension of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 25, 2003

By: *Robert W. Mann* *Robert W. Mann*  
M. Paul Barker *Reg. No. 48,555*  
Reg. No. 32,013 *for*

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